IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2007

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.307 of 2004

Commissioner of Income Tax-VII
Chennai .. Appellant

Vs.

M/s Vijay Constructions
Chennai .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A', Chennai in I.T.A. No.2442/Mds/94 dated 21.10.2003 for the assessment year 1991-92 and against the order of the Commissioner of Income Tax Appeal, dated 29.8.1994, made in ITA.No.151/94-95 and against the order of the Asst.Commissioner of Income Tax City Circle VII (2) Madras-34 in The Assessment order of 1991-1992, dated 28.3.1994, and made in PNA/GIR.No.2313-V.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel
for Income-tax Dept.

For Respondent : No Appearance

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JUDGMENT

(Judgment of the Court was
delivered by P.P.S.JANARTHANA RAJA, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A', Chennai in I.T.A. No.2442/Mds/94 dated 21.10.2003. On 23.06.2004, this Court admitted the appeal and formulated the following substantial questions of law:-

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"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the compensation amount paid by the assessee to the land owners towards the undivided share of land which was not sold is to be treated as a business expenditure?

2. Whether in the facts and circumstances of the case, the Tribunal had enough material to hold and was right in holding that the agreement with the land owners for payment of the compensation was among the seized documents?

3. Whether in the facts and circumstances of the case, the Tribunal was right in accepting the assessee's version that the documents were with the department, and allowing the appeal, without giving an opportunity to the assessing officer?"

2. The facts leading to the above substantial questions of law are as under:-

The assessee is a partnership firm and is engaged in the business of construction of flats and commercial building. The relevant assessment year is 1991-92 and the corresponding accounting year ended on 31.03.1991. The assessee firm filed its Return of income on 24.04.1992 admitting a total income of Rs.58,130/-. The return was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short) accepting the total income returned. Subsequently notice under Section 143(2) of the Act was issued. The Assessing Officer completed the assessment on 28.03.1994 under Section 143(3) of the Act determining the total income at Rs.7,15,130/-. While computing the assessment, the Assessing Officer held that the amount of Rs.6,57,000/- debited to the Profit and Loss account towards compensation is not related to the business and hence the same was disallowed. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) directed the Assessing Officer to treat the said expenses as business expenditure and deleted the addition of Rs.6,57,000/- and allowed the appeal. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the C.I.T.(A). Hence the present tax case by the Revenue.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the amount paid by the assessee is not in the course of business and hence the Assessing Officer rightly refused to treat the compensation as business expenditure.

4. In spite of the notice served on the respondent, there is no representation on behalf of the respondent.

5. Heard the counsel. The assessee entered into an agreement with the land owners, who are ten in number, for developing the land by constructing flats at 18, Halls Road, Kilpauk, Chennai. It was agreed upon to develop their shares of land at an agreed amount. However, on

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completion of the project, it was found that the land belonging to the land owners have not been transferred in full and payment made to them fell short of the agreed amount. Their undivided shares of land could not be transferred to anybody else as the building had been already completed. On compromise between the land owners and the assessee firm, the land owners were given compensation for the shortfall in the payment due to them. The said compensation amount has been declared by the land owners as income in their income-tax returns. The assessee obtained permission from the Government of Tamil Nadu in G.O.Ms.No.91, Housing and Urban Development Department, dated 29.01.1988 for construction of the building exceeding 20 metres floor area, abutting road width, height of the building etc. In other words, the exemption was given to go for more floors by violating the guidelines given by Madras Metropolitan Development Authority. After obtaining the exemption there was hue and cry in the public and the matter was taken to the press. There was a news item in "Indian Express" on 13.07.1989 with the caption "when public safety takes a back seat". In that news it was stated that about 100 applications for building plans (including 50 for multi-storeyed buildings) were ratified and approved by the Government, overriding the objections of the Madras Metropolitan Development Authority. The assessee's site was mentioned as a typical example. It was alleged that no multi-storeyed building could be permitted since the abutting roads are only 12 metres and 19.15 metres wide, but this standard was done away with. It was also mentioned in the news item that it would cause great inconvenience to the other residents and would also pose a danger to the occupants. A similar news was also published in Malai Malar dated 13.07.1989. At that time, there was a change in Government and hence the assessee thought it proper to restrict the construction to the guidelines of the Madras Metropolitan Development Authority. By that time, the agreements were already entered into with the flat owners regarding the price of the land and the price of the building and hence no extra amount could be charged to them. In this case, the assessee planned to construct 24 flats by obtaining the exemption from the Government by dividing the land cost among the 24 flat owners and accordingly agreements were made with them. Subsequently, due to the objection from the public, the assessee constructed only 16 flats. But the land owners have to get the full price. The share of the land price contributed by 16 land owners would yet fall short of the total consideration to be paid to the land owners. Under these peculiar circumstances, the assessee had no other go than to suffer the loss and also there is no other way than to take the loss on to itself. The agreement was entered with the land owners to give them a particular price for the land. Also, the assessee was not in a position to collect the total price from the flat owners. Hence loss was incurred for the purpose of carrying on the business and it is only related to the business. In the case of Commissioner of Income-tax, Kerala Vs. Malayalam Plantations Ltd. [1964] 53 ITR 140 (SC), the Supreme Court considered the scope of the phrase "for the purpose of the business" and held at Page No.150, as follows:-

> "The aforesaid discussion leads to the following result: The expression "for the purpose of the business" is wider in scope than the expression "for the purpose of earning profits". Its range is wide: it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; it

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> may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business."

In the case of S.A. Builders Ltd. Vs. Commissioner of Income-tax (Appeals) and Another, [2007] 288 ITR 1 (SC), the Supreme Court had given certain guidelines as to how the Revenue should consider and allow certain expenditure as business expenditure, and held at Page No.9, as follows:-

> "We agree with the view taken by the Delhi High Court in CIT v. Dalmia Cement (B.) Ltd. [2002] 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profit. The income-tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

Applying the above principles in the present case, we are of the view that the expenses incurred by the assessee is for the purpose of the business and hence the same is an allowable deduction in computing the income of the assessee. Both the first appellate authority as well as the Tribunal have given a concurrent finding that it is an expenditure which was incurred for the purpose of the business, and the order of the Tribunal is not a perverse one. The finding given by the authorities below is based on valid materials and evidence and we find no error or illegality in the order of the Tribunal so as to warrant interference.

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6. Under the circumstances, we answer the first question in favour of the assessee and against the Revenue. As we answered the first question, it is unnecessary to consider the second and third questions as they are consequential in nature. Accordingly, the tax case is dismissed. No costs.

ss/km

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench "A",
   Rajaji Bhavan, Besant Nagar, Chennai.

2. The Commissioner of Income-tax (Appeals)-VI,
   Madras.

3. The Assistant Commissioner of Income-tax,
   City Circle VII (2), Madras-34.

4. The Commissioner of Income Tax VII,
   Chennai.

+1 cc to M/s.Pushya Sitaraman, Advocate Sr.No.48147.

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